

(2011) 07 JH CK 0142

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3822 of 2011 with I.A. No. 2154 of 2011

Mahagama Anchal Matsyajeevi Sahyog Samiti Ltd., a
Cooperative Society, Godda

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Citation : (2011) 4 JCR 331

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—Upon consent by the applicant as well as the counsel for the respondents, interlocutory application is also taken up for hearing.

2. Having heard the counsel of both sides and looking to the facts and circumstances of the case, it appears that there is some settlement of 34 tanks in favour of the petitioner of Writ Petition(C) No.3822 of 2011 vide order dated 19.05.2011. It also appears that further necessary amount has also been deposited by the original petitioner cooperative society. The applicant of the interlocutory application is also similarly situated another cooperative society and is also in search of such settlement of tanks, and therefore, he is vitally interested in the outcome of the writ petition, hence it is joined as respondent No. 5 and that is because leave to I.A. is allowed and disposed of.

3. Necessary amendment shall be carried out in red ink in Writ Petition (C) No.3822 of 2011.

4. Learned counsel appearing for the respondents submitted that in pursuance of the policy floated by the respondent for allotment of the tanks in question petitioner applied for allotment and ultimately as per Annexure-5 dated 19.05.2011, allotment of 34 tanks were made in favour of the petitioner cooperative society. Necessary amount has also been deposited by the petitioner

with the respondent State authorities. It is further submitted by counsel for the petitioner that there are several numbers of the petitioner cooperative society and they have been further allotted these tanks and necessary seeds for cultivation of the fishes have also been purchased by the members of the petitioner society. Thus, after allotment of 34 tanks in favour of the petitioner, there is further allotment by the cooperative society to its members. It is further submitted by the counsel for the petitioner that some dissatisfied soul has applied to the Government Authorities complaining several things and it has been entertained privately by the respondents and a final decision has been taken by the Deputy Commissioner. Godda for cancellation of the settlement of 34 tanks without assigning any reason and without giving any show cause notice to the petitioner and without giving any opportunity of making a representation to the respondents. Whatever stated in the complaint cannot be treated as a gospel truth. Had an opportunity been given to the petitioner, they would have pointed out to the respondents that no illegality has been committed by the respondents in granting of 34 tanks to the petitioner society. Abruptly, an order has been passed at Annexure-6 dated 06.07.2011 by District Fisheries Officer that he has been directed by Deputy Commissioner, Godda to cancel the allotment followed by consequential order at Annexure-7 dated 06.07.2011. Thus both these orders i.e. Annexure-6 as well as Annexure-7 should be set aside mainly for the reason that there is no legality in the allotment of the tanks in question and even assuming that there is irregularity, there is no show cause given to the petitioner so that petitioner might explain the case to the respondents. No inquiry was conducted and the complain was presumed to have been correct and the order of cancellation of the allotment of 34 tanks has been passed on file by Deputy Commissioner, Godda which is sheer arbitrariness, as submitted by the counsel for the petitioner and hence also the orders at Annexures-6 and 7 deserve to be quashed.

5. Learned counsel for the State submitted that the orders at Annexures-6 and 7 have been passed by respondent authorities on the basis of complaint received and on file a decision has been taken to cancel the allotment of 34 tanks. The counsel for the respondents State has kept the original file present before the Court which has been perused by this Court. It is further submitted by the counsel for the respondents that if there is any defect or irregularity in passing the orders at Annexures-6 and 7, the same will be rectified.

6. I have heard the counsel for the newly joined respondent which is an intervenor by LA. No.2154 of 2011. Learned counsel for the newly joined party submitted that upon his complain this decision has been taken by the respondent State of cancellation of the allotment of 34 tanks in favour of the petitioner mainly for the reason that there was illegality in grant of 34 tanks to the petitioner. It is further submitted by the counsel for the newly added respondent that a policy decision has been taken by the respondent State vide memo No. 1410 dated 29th June, 2011 vide paragraph-5 onwards and therefore, the allotment of 34 tanks ought to be cancelled and rightly a decision has been taken

by Deputy Commissioner, Godda, therefore no illegality has been committed while passing the order at Annexure-6 and the consequent order at Annexure-7 by the respondents.

7. Having heard the counsel of both sides and looking to the facts and circumstances of the case I hereby quash and set aside the order passed by District Fisheries Officer, Godda dated 06.07.2011 (Annexure-6) as well as of same date Annexure-7 mainly for the following facts and circumstances:--

(i) The petitioner is a cooperative society registered under Jharkhand Cooperative Societies Act, 1935. Petitioner had applied for allotment of water tanks for the purpose of fisheries as per policy floated by respondent which is at Annexure-1 to the memo of petition which is dated 18th January, 1992.

(ii) Upon proper verification of all the aspects stated in the policy decision at Annexure-1, 34 water tanks have been allotted to the petitioner cooperative society by the respondent State authorities vide order dated 19.05.2011 (Annexure-5 to the memo of petition).

(iii) In pursuance of the aforesaid allotment of 34 water tanks necessary payment was also made by the petitioner to the respondent State authorities to the tune of Rs. 38,000/-. This amount has been received and the receipt whereof is Annexure-4 to the memo of petition.

(iv) It appears that the petitioner, being a cooperative society there are several members and to its members these water bodies have been further allotted by the petitioner society and they have also purchased necessary seeds for the purpose of fisheries. Thus, there is further execution of the contract after the allotment of 34 water bodies to the petitioner cooperative society. Thus petitioner has changed its position, after allotment of water tanks.

(v) It appears that thereafter some dissatisfied soul has applied to the respondent Government Authorities making certain complaints and without holding any inquiry upon that complaints order has been passed by Deputy Commissioner, Godda for cancellation of the allotment made in favour of the petitioner. This is not permissible in the eye of law.

(vi) Original file has been presented before this Court by the counsel for the respondent State. Looking to this file it appears that upon complaint received from the newly joined respondent No.5 Secretary of Cooperative Department, Jharkhand has passed the order to hold inquiry on 5.7.2011, but, it appears that the dissatisfied soul must be in too much hurry and therefore, without holding any inquiry and without waiting for the report to come in the hands of high ranking respondents Officer, a decision has been taken to cancel the allotment of 34 water tanks. This is an arbitrary action on the part of the respondents and hence also the orders at Annexures-6 and 7 deserve to be quashed and set aside.

(vii) It further appears that no reasons have been assigned in the impugned order at Annexure-6 which makes the order full of arbitrariness. Moreover, no

notice has been given to the petitioner before cancellation otherwise petitioner would have pointed out to the respondents about his case and the legality in allotment of 34 water bodies to the petitioner society.

(viii) The so called new policy dated 19th May, 2011 cannot be relied upon, as this reason was never given in impugned order at Annexure-6. Moreover, it is subsequent in point of time because allotment of 34 ponds is dated 12.05.2011 (Annexure-5).

8. As a cumulative effect of the facts and circumstances, it appears that there is a gross violation of the principles of natural justice after allotment of 34 water tanks in favour of petitioner, amount has also been deposited by the petitioner and thereafter there is a further allotment to the members of the petitioner society. By the petitioner society, necessary seeds have also been purchased for fisheries purpose and upon the complain by somebody i.e. respondent No.5, whole decision has been taken without holding any inquiry and without giving any notice. I, therefore, quash and set aside the decision taken by the respondent State authorities of cancelling the allotment of 34 tanks in favour of the petitioner which is dated 06.07.2011 Annexure-6 as well as dated 06.07.2011 at Annexure-7 to the memo of petition.

9. Liberty is reserved with the respondent State authorities to take any action against the petitioner to violating the law, rules, regulations and Government policy applicable to the petitioner and at least after following the principles of natural justice.

10. This writ petition is allowed and disposed of with a cost of Rs. 5000/- to be paid by the State authorities to the petitioner within four weeks from the date of receipt of a copy of this order.

11. The writ petition is allowed with cost.